



[Billing Code 3190 –W2-P]

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Determination Regarding Waiver of Discriminatory Purchasing Requirements with Respect to Goods and Services Covered by Chapter Seventeen of the United States-Korea Free Trade Agreement

AGENCY: Office of the United States Trade Representative.

ACTION: Determination Regarding Waiver of Discriminatory Purchasing Requirements under Trade Agreements Act of 1979.

EFFECTIVE DATE: March 15, 2012.

FOR FURTHER INFORMATION CONTACT: Jean Heilman Grier, Senior Procurement Negotiator, Office of the United States Trade Representative, (202) 395-9476, or Daniel Stirk, Associate General Counsel, Office of the United States Trade Representative, (202) 395-9617.

SUPPLEMENTARY INFORMATION: On June 30, 2007, the United States and the Republic of Korea entered into the United States-Korea Free Trade Agreement (“KORUS”). Chapter 17 of KORUS sets forth certain obligations with respect to

government procurement of goods and services, as specified in Annex 17-A of KORUS. These obligations include, *inter alia*, that in assessing whether a supplier satisfies the conditions for participation, a procuring entity shall not impose the condition that, in order for a supplier to participate in a procurement or be awarded a contract, the supplier has been previously awarded one or more contracts by a procuring entity of that Party or that the supplier has prior work experience in the territory of that Party.

On October 21, 2011, the President signed into law the United States-Korea Free Trade Agreement Implementation Act (“the KORUS Act”) (Pub. L. No. 112–41, 125 Stat. 428 (19 U.S.C. 3805 note). In section 101(a) of the KORUS Act, the Congress approved KORUS. The KORUS will enter into force on March 15, 2012.

Section 1–201 of Executive Order 12260 of December 31, 1980 (46 FR 1653) delegates the functions of the President under Sections 301 and 302 of the Trade Agreements Act of 1979 (“the Trade Agreements Act”) (19 U.S.C. 2511, 2512) to the United States Trade Representative.

Acting pursuant to Executive Order 12260, the United States Trade Representative designated the Republic of Korea for purposes of section 301(a) of the Trade Agreements Act, on the basis of the Republic of Korea’s status as a party to the World Trade Organization Agreement on Government Procurement (“the GPA”). The Republic of Korea continues to be designated for purposes of section 301(a) of the Trade Agreements Act.

Under KORUS, the Republic of Korea will provide reciprocal competitive government procurement opportunities to United States products and suppliers of such products, which are greater than the reciprocal competitive government procurement opportunities the Republic of Korea provides to United States products and suppliers of such products under the GPA. The Republic of Korea's commitment to provide such reciprocal competitive procurement opportunities constitutes an independent basis for its designation for the purpose of section 301(1) of the Trade Agreements Act.

DETERMINATION: In conformity with sections 301 and 302 of the Trade Agreements Act and Executive Order 12260, and in order to carry out U.S. obligations under Chapter 17 of KORUS, I hereby determine that:

1. The Republic of Korea is a country, which, pursuant to KORUS, will provide appropriate reciprocal competitive government procurement opportunities to United States products and suppliers of such products. In accordance with Section 301(b)(3) of the Trade Agreements Act, the Republic of Korea is so designated for purposes of Section 301(a) of the Trade Agreements Act.

2. With respect to eligible products of the Republic of Korea (*i.e.*, goods and services covered by the Schedule of the United States in Annex 17-A of KORUS) and suppliers of such products, the application of any law, regulation, procedure, or practice

regarding government procurement that would, if applied to such products and suppliers, result in treatment less favorable than accorded --

(A) to United States products and suppliers of such products; or

(B) to eligible products of another foreign country or instrumentality which is a party to the GPA and suppliers of such products,
shall be waived.

With respect to the Republic of Korea, this waiver shall be applied by all entities listed in the Schedule of the United States in Annex 17-A of KORUS.

3. The designation in paragraph 1 and the waiver in paragraph 2 are subject to modification or withdrawal by the United States Trade Representative.

Ron Kirk

United States Trade Representative

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